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of the State of California  
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Attorneys for Complainant

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

GREGORY J. KELLY  
P. O. Box 922  
Saratoga, CA 95071

California Certified Public Accountant  
Certificate #52926

Respondent.

) NO.: D1-96-6

) DEFAULT DECISION

) [Gov. Code section 11520]

FINDINGS OF FACT

1. On or about August 20, 1998, Complainant Carol Sigmann in her official capacity as Executive Officer of the Board of Accountancy, Department of Consumer Affairs, State of California (hereinafter "Board"), filed Accusation and Petition to Revoke Probation No. D1-96-6 against Gregory J. Kelly. (hereinafter "respondent").

2. On or about August 24, 1998, Dayna Collier, an employee of the Office of the Attorney General, sent by certified and regular mail a copy of Accusation and Petition to Revoke Probation No. D1-96-6, Statement to Respondent, Government Code sections 11507.5, 11507.6, 11507.7, Notice of Defense, and a Request for Discovery to respondent's last address of record

1 with the Board which was P.O. Box 922, Saratoga, California 95071. The address was  
2 confirmed on August 21, 1998 by Laurence E. Finney (Investigative CPA) as respondent's  
3 current address of record on file with the Board. The documents sent via regular mail to P.O.  
4 Box 922, Saratoga, California 95071 were not returned. The documents sent via certified mail  
5 were returned and received by the Office of the Attorney General on September 14, 1998 as  
6 "unclaimed".

7 On September 14, 1998, Lawrence E. Finney was contacted. He advised that the  
8 Board had an address previously used by respondent at 1625 The Alameda, #810, San Jose,  
9 California 95126. On September 14, 1998 Dayna Collier sent by regular and certified mail a  
10 copy of Accusation and Petition to Revoke Probation No. D1-96-6, Request for Discovery,  
11 Government Code sections 11507.5, 11507.6, 11507.7, and Notice of Defense. The documents  
12 sent by regular mail were not returned. The documents sent via certified mail were returned and  
13 received by the Office of the Attorney General on October 8, 1998 as "unclaimed" along with a  
14 yellow sticker stating "Notify Sender of New Address Kelly, Gregory P.O. Box 922, Saratoga,  
15 CA 95071-0922."

16 3. On or about May 12, 1989, the Board of Accountancy issued Certified Public  
17 Accountant Certificate No. 52926 to Gregory J. Kelly, and at all times relevant herein, said  
18 Certified Public Accountant Certificate was, and currently is, in full force and effect, being  
19 renewed through November 30, 1998.

20 4. Government Code section 11506 provides, in pertinent part:

21 "(c) The respondent shall be entitled to a hearing on the merits if \* \* \* the  
22 respondent files a notice of defense, and \* \* \* the notice shall be deemed a  
23 specific denial of all parts of the accusation not expressly admitted. Failure to file  
a notice of defense shall constitute a waiver of respondent's right to a hearing, but  
the agency in its discretion may nevertheless grant a hearing . . . ."

24 5. Respondent failed to file a Notice of Defense within 15 days after the  
25 Accusation and Petition to Revoke Probation was mailed to the latest address that respondent is  
26 required to maintain on file with the Board. Therefore, respondent waived his right to a hearing  
27

1 on the merits of Accusation and Petition to Revoke Probation No. D1-96-6.

2 6. Government Code section 11520 provides, in pertinent part:

3 "(a) If the respondent either fails to file a notice of defense or to appear at the  
4 hearing, the agency may take action based upon the respondent's express  
5 admissions or upon other evidence and affidavits may be used as evidence without  
any notice to respondent; . . . ."

6 7. Pursuant to its authority under Government Code section 11520, and based on  
7 the evidence before it, the Board finds that the following allegations contained in Accusation and  
8 Petition to Revoke Probation No. D1-96-6 are true:

9 A. Respondent was engaged to review and prepare financial statements for  
10 Summitpointe Homeowners' Association for the year ending December 31, 1997. Respondent's  
11 review report contained reporting deficiencies. Specifically, respondent failed to mention the  
12 statement of cash flows, even though such a statement is presented as part of the financial  
13 statements of the entity. Additionally, the report did not indicate the level of responsibility that  
14 the accountant is taking for the supplementary information presented with the basic financial  
15 statements.

16 B. Respondent, an individual practitioner used the plural designation, "Certified Public  
17 Accountants" on his letterhead, despite the fact that the Board denied respondent's fictitious  
18 name application submitted to the Board in 1991, requesting the use of the plural, "Certified  
19 Public Accountants," because his form of business was as a sole-practitioner. Title 16, California  
20 Code of Regulations section 66 prohibits the use of the plural designation by an individual  
21 practitioner.

22 C. Respondent has failed to comply with the terms of his probation in a prior disciplinary  
23 matter (AC-96-6), as more specifically set forth as follows:

24 1. Respondent failed to make any installment payments to reimburse the Board  
25 for its investigation and prosecution costs (\$10,000.00), as required by Term Number 14 of the  
26 Board's decision. Respondent appeared before the Administrative Committee in Sacramento in  
27

1 accordance with the terms of his probation and presented a check in the amount of \$4,167  
2 (representing ten months of installment payments). The check was dishonored.

3 2. Respondent failed to obey all federal, California, other states' and local laws,  
4 including those rules relating to the practice of public accountancy in California by virtue of the  
5 matters set forth in paragraphs 7A and 7B above, in violation of Term Number 15 of the Board's  
6 decision.

7 8. The costs of investigation and prosecution of this case are \$1,745.12.

8 **DETERMINATION OF ISSUES**

9 1. Respondent is subject to disciplinary action pursuant to section 5100(f) of the  
10 California Business and Professions Code in conjunction with section 5062 and Title 16,  
11 California Code of Regulations section 58, for preparing a report containing reporting  
12 deficiencies, as set forth more specifically in the Findings of Fact paragraph 7A.

13 2. Respondent is subject to disciplinary action pursuant to Business and  
14 Professions Code section 5100(f) in conjunction with Title 16, California Code of Regulations  
15 section 66, in that respondent, a sole practitioner, used a plural designation on his letterhead, as  
16 set forth more specifically in the Findings of Fact paragraph 7B.

17 3. Respondent is subject to revocation of probation in that respondent has failed  
18 to comply with the terms of his probation, in a prior disciplinary matter (AC-96-6), as set forth  
19 more fully in paragraph 7C.

20 **ORDER OF THE BOARD**

21 California Certified Public Accountant Certificate No. 52926 heretofore issued to respondent  
22 Gregory J. Kelly, is hereby revoked. An effective date of January 6, 1999 has been  
23 assigned to this Order.

24 Made this 7 day of December, 1998

25   
26 FOR THE BOARD

1 DANIEL E. LUNGREN, Attorney General  
of the State of California

2 KIM M. SETTLES, State Bar No. 116945

Deputy Attorney General

3 2101 Webster Street, 12<sup>th</sup> Flr.

Oakland, CA 94612-3049

4 Telephone: (510) 286-4144

Facsimile: (510) 286-4020

5 Attorneys for Complainant

6  
7  
8 BEFORE THE  
9 BOARD OF ACCOUNTANCY  
10 DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

11 In the Matter of the Accusation  
Against:

) NO.: DI-96-6

)  
) ACCUSATION AND PETITION  
) TO REVOKE PROBATION

12 GREGORY J. KELLY

13 P. O. Box 922

14 Saratoga, CA 95071

15 California Certified Public Accountant  
Certificate #52926

16 Respondent.

17  
18 Carol J. Sigmann, complainant, as causes for disciplinary action, alleges:

19 1. She is the Executive Officer of the State Board of Accountancy, Department of  
20 Consumer Affairs, State of California, and makes and files this Accusation and Petition To  
21 Revoke Probation solely in her official capacity.

22 LICENSE INFORMATION

23 2. On or about May 12, 1989, the Board of Accountancy (hereafter referred to as  
24 "Board") issued Certified Public Accountant Certificate No. 52926 to Gregory J. Kelly (hereafter  
25 referred to as "respondent"), and at all times relevant herein, said Certified Public Accountant  
26 Certificate was, and currently is, in full force and effect, being renewed through November 30,

1 1998. On June 22, 1997, pursuant to Accusation No. AC-96-6, said certificate was revoked, with  
2 said revocation stayed for a three-year probationary period on certain specified terms and  
3 conditions. (A copy of the Board's decision in said Accusation No. AC-96-6 is attached hereto  
4 as Exhibit A and is herein incorporated by reference as though fully set forth.)

### 5 STATUTES AND REGULATIONS

6 3. At all times material herein, section 5100 of the California Business and  
7 Professions Code (hereinafter "Code") has provided in pertinent part that "(a)fter notice and  
8 hearing, the Board may revoke, suspend or refuse to renew any permit or certificate" issued by  
9 the Board for unprofessional conduct, including but not limited to:

10 (f) Willful violation of this chapter or any rule or regulation promulgated by the board  
11 under the authority granted under this chapter.

12 4. Code section 5062 provides that a licensee shall issue a report which conforms  
13 to professional standards upon completion of a compilation, review or audit of financial  
14 statements.

15 5. The Board's regulations are codified in Title 16 of the California Code of  
16 Regulations, §§ 1-99.<sup>1</sup>

17 6. Board Rule 66 provides that an individual practitioner shall not use the plural  
18 designations "Certified Public Accountants" or "Public Accountants".

19 7. Board Rule 58 provides that licensees shall comply with all applicable  
20 professional standards, including but not limited to generally accepted accounting principles and  
21 generally accepted auditing standards. Applicable standards of practice pertinent to this  
22 accusation include, without limitation:

23 A. Statement on Financial Accounting Standards ("SFAS"), No. 95, regarding the  
24

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25 <sup>1</sup> The Board's regulations, codified at Title 16 of the California Code of Regulations in  
26 sections 1-99, are hereinafter referred to as "Board Rule."

1 "statement of cash flows", promulgated by the Financial Accounting Standards.

2 B. Statements on Standards for Accounting and Review Services ("SAARS")  
3 promulgated by the American Institute of Certified Public Accountants (AICPA). The sections  
4 pertinent herein include, without limitation: AR §§ 100.05, 100.43, which state that users of  
5 financial statements should be able to readily identify the degree of responsibility the accountant  
6 is taking with respect to such statement and any supplementary information.

7 **FIRST CAUSE FOR DISCIPLINARY ACTION**

8 8. Respondent was engaged to review and prepare financial statements for  
9 Summitpointe Homeowners' Association for the year ending December 31, 1997. Respondent's  
10 review report contained reporting deficiencies in that said report failed to mention the statement  
11 of cash flows, even though such a statement is presented as part of the financial statements of the  
12 entity, and failed to indicate the level of responsibility that the accountant is taking for the  
13 supplementary information presented with the basic financial statements.

14 9. The conduct of respondent, as alleged in paragraph 8, constitutes violation of  
15 Code section 5062, in conjunction with Board Rule 58, and provides grounds for disciplinary  
16 action under Code section 5100(f).

17 **SECOND CAUSE FOR DISCIPLINARY ACTION**

18 10. Respondent, an individual practitioner, used the plural designation, "Certified  
19 Public Accountants" on his letterhead during the calendar year 1998.

20 11. The conduct of respondent, as alleged in paragraph 10, constitutes violation  
21 of Board Rule 66 and provides grounds for disciplinary action under Code section 5100(f).

22 **CAUSES FOR REVOCATION OF PROBATION**

23 12. Respondent has violated Term Number 14 of the Board's decision in  
24 Accusation No. AC-96-6, in that respondent has failed to make any installment payments to  
25 reimburse the Board for its investigation and prosecution costs (\$10,000.00). Respondent  
26 appeared before the Administrative Committee in Sacramento on April 23, 1998, in accordance

1 with the terms of his probation and presented a check in the amount of \$4,167 (representing ten  
2 months of installment payments). The check was subsequently dishonored.

3 13. Respondent has violated Term Number 15 of the Board's decision in  
4 Accusation No. AC-96-6, in that respondent failed to obey all federal, California, other states'  
5 and local laws, including those rules relating to the practice of public accountancy in California,  
6 by reason of the matters alleged in paragraphs 8 and 10.

7 14. Respondent's violation of Term Numbers 14 and 15 in the Board's decision  
8 provides the Board with grounds to revoke the probation and carry out the disciplinary order that  
9 was stayed.

10 PRAYER

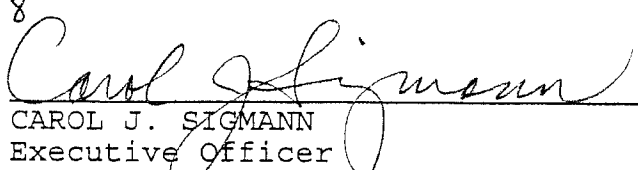
11 WHEREFORE, complainant requests that the Board hold a hearing on the  
12 matters alleged herein, and that following said hearing, the Board issue a decision:

13 1. Revoking or suspending CPA certificate no. 52926 issued to respondent  
14 Gregory J. Kelly.

15 2. Revoking respondent Gregory J. Kelly's probation and imposing the penalty of  
16 revocation heretofore stayed.

17 3. Taking such other and further action as the Board deems proper.

18 DATED: August 20, 1998

19   
20 CAROL J. SIGMANN  
21 Executive Officer  
22 Board of Accountancy  
23 Department of Consumer Affairs  
24 State of California

25 Complainant

26 0354110-SF1998AD0958



# EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General  
 of the State of California  
 2 JEANNE C. WERNER  
 Deputy Attorney General, State Bar No. 93170  
 3 Department of Justice  
 2101 Webster Street, 12th Floor  
 4 Oakland, California 94612-3049  
 Telephone: (510) 286-3787  
 5 Fax: (510) 286-4020

6 Attorneys for Complainant

7  
 8  
 9 BEFORE THE  
 BOARD OF ACCOUNTANCY  
 DEPARTMENT OF CONSUMER AFFAIRS  
 10 STATE OF CALIFORNIA

11 In the Matter of the Accusation ) NO. AC-96-6  
 12 Against: )  
 ) STIPULATION IN  
 13 GREGORY J. KELLY ) SETTLEMENT  
 1625 The Alameda, Ste. 810 )  
 14 San Jose, CA 95126 )  
 )  
 15 Certified Public Accountant )  
 Certificate No. CPA 52926 )  
 16 )  
 Respondent. )  
 17 )

18 IT IS HEREBY STIPULATED by and between Gregory J.  
 19 Kelly, the respondent in this proceeding, and the Board of  
 20 Accountancy, State of California, by and through its attorney,  
 21 Jeanne C. Werner, Deputy Attorney General, that:  
 22 1. The accusation in case number AC-96-6 is currently  
 23 pending against Gregory J. Kelly ("respondent"), said accusation  
 24 having been filed with the Board of Accountancy, Department of  
 25 Consumer Affairs of the State of California ("Board") on July 23,  
 26 1996.  
 27

1           2. Carol B. Sigmann, Executive Officer of the Board,  
2 is the complainant in the accusation, which was filed and is  
3 being prosecuted solely in her official capacity.

4           3. Respondent is licensed by the Board under  
5 Certified Public Accountant Certificate No. CPA 52926, which  
6 license is renewed through November 30, 1998.

7           4. The Board acquired jurisdiction over respondent  
8 because respondent is a Board licensee and was served with a copy  
9 of the accusation and all other documents required by Government  
10 Code sections 11503 and 11505. Respondent has received and read  
11 the accusation, and has filed a Notice of Defense. A copy of the  
12 accusation is attached hereto as Exhibit A and incorporated  
13 herein.

14           5. Respondent understands the nature of the charges  
15 alleged in the accusation and that the charges and allegations,  
16 if proven at hearing, constitute cause for imposing discipline  
17 upon respondent's Certified Public Accountant Certificate.

18           6. Respondent is fully aware of his right to a  
19 hearing on the charges contained in the accusation, his right to  
20 confront and cross-examine witnesses against him, his right to  
21 reconsideration, appeal, and any and all other rights which may  
22 be accorded him under the California Administrative Procedure Act  
23 (Gov. Code, § 11500 et seq.) and, with this in mind, freely and  
24 voluntarily waives such rights.

25           7. It is acknowledged by the parties that this  
26 stipulation constitutes an offer in settlement to the Board and  
27 is not effective until adoption by the Board.

1           8. In the event this stipulation is not adopted by  
2 the Board, nothing herein recited shall be construed as a waiver  
3 of respondent's right to a hearing or as an admission of the  
4 truth of any of the matters charged in the accusation.

5           9. Respondent admits all of the charges and  
6 allegations in the accusation, as more fully set forth in  
7 paragraphs 11 through 18 of the accusation, and stipulates that,  
8 accordingly, cause for discipline exists against his license in  
9 view of the audits he performed and because of his continuing  
10 education deficiencies, as is set forth in the accusation.

11           10. Admissions made by respondent herein are for  
12 purposes of this proceeding, for any other disciplinary  
13 proceeding by the Board or any other state or federal licensing  
14 or regulatory entity, and for any petition for reinstatement,  
15 reduction of penalty, or application for relicensure, and shall  
16 have no force or effect in any other case or proceeding.

17           11. Respondent understands that in signing this  
18 stipulation rather than contesting the accusation, he is enabling  
19 the Board to issue the following order without further legal  
20 process.

21           12. Based upon the foregoing recitals, THE PARTIES  
22 STIPULATE AND AGREE THAT the Board shall, without further notice  
23 or formal proceeding, issue the following order:

24                               ORDER

25  
26           IT IS HEREBY ORDERED that Certified Public Accountant  
27 Certificate number CPA 52926 issued to Gregory J. Kelly is

1 revoked. However, the revocation is stayed, and respondent is  
2 placed on probation for three years on the following terms and  
3 conditions:

4 13. CONTINUING EDUCATION COURSES

5 48 Hour Additional CPE Requirement. Respondent shall  
6 complete and provide proper documentation of 48 hours of  
7 professional education courses, with actual coursework to be  
8 directed by the Board or its designee in the areas of GAAP, GAAS,  
9 and FASB updates and/or other core curriculum.

10 This education shall be in addition to continuing  
11 education requirements for relicensing on December 1, 1998. The  
12 professional education courses shall be completed within a period  
13 of time designated and specified in writing by the Board or its  
14 designee, which time-frame shall be incorporated as a condition  
15 of this probation. Failure to satisfactorily complete the 48  
16 additional hours of required courses as scheduled shall  
17 constitute a violation of probation.

18 14. COST REIMBURSEMENT

19 Respondent shall reimburse the Board \$10,000.00 for its  
20 investigation and prosecution costs. The payment shall be made  
21 on an installment schedule determined by the Board, and the  
22 payments will be completed in the first 24 months of probation,  
23 with all payment being due one year before probation is scheduled  
24 to terminate.

25 15. OBEY ALL LAWS

26 Respondent shall obey all federal, California, other  
27 states' and local laws, including those rules relating to the

1 practice of public accountancy in California.

2 16. SUBMIT WRITTEN REPORTS

3 Respondent, within 10 days of completion of the  
4 quarter, shall submit quarterly written reports to the Board on a  
5 form obtained from the Board.

6 Respondent must submit acceptable written documentation  
7 to the Board regarding any continuing education courses taken  
8 either as a condition of this probation or as a prerequisite for  
9 license renewal. This reporting requirement shall be an addendum  
10 to his required quarterly reports.

11 Respondent shall submit such written reports and other  
12 declarations and verification of actions under penalty of perjury  
13 as are required. These declarations shall contain statements  
14 relative to respondent's compliance with all the terms and  
15 conditions of probation. Respondent shall immediately execute  
16 all release of information forms as may be required by the Board  
17 or its representatives.

18 17. PERSONAL APPEARANCES

19 Respondent, during the period of probation, shall  
20 appear in person at interviews/meetings as directed by the Board  
21 or its designated representatives, provided notification is  
22 accomplished in a timely manner.

23 18. COOPERATE WITH PROBATION MONITORING

24 Respondent shall fully comply with the terms and  
25 conditions of the probation imposed by the Board and shall  
26 cooperate fully with representatives of the Board in its  
27 monitoring and investigation of respondent's compliance with

1 probation terms and conditions. Respondent shall at all times  
2 maintain current license status with the Board, including during  
3 any period of suspension. If the license is expired at the time  
4 the Board's decision becomes effective, the license must be  
5 renewed within 30 days of the effective date of the decision.

6 19. PRACTICE INVESTIGATION

7 Respondent shall be subject to, and shall permit, a  
8 practice investigation of respondent's professional practice.  
9 Such a practice investigation shall be conducted by  
10 representatives of the Board, provided notification of such  
11 review is accomplished in a timely manner.

12 20. SUPERVISED PRACTICE

13 Within 30 days of the effective date of this decision,  
14 respondent shall submit to the Board or its designee for its  
15 prior approval a plan of practice which shall be monitored by  
16 another CPA who provides periodic reports to the Board or its  
17 designee. Respondent shall pay all costs for such monitoring.

18 21. SAMPLES - AUDIT, REVIEW OR COMPILATION

19 During the period of probation, if respondent  
20 undertakes an audit, review or compilation engagement, respondent  
21 shall submit to the Board, as an attachment to the required  
22 quarterly report, a listing of the same. One or more from each  
23 category may be selected, and the resulting report and financial  
24 statement and all related working papers must be submitted to the  
25 Board or its designee upon request.

26 22. COMPLY WITH CITATIONS

27 Respondent shall comply with all final orders resulting

1 from citations issued by the Board.

2 23. TOLLING OF PROBATION FOR OUT-OF-STATE  
3 RESIDENCE/PRACTICE

4 In the event respondent should leave California to  
5 reside or practice outside this state, respondent must notify the  
6 Board in writing of the dates of departure and return. Periods  
7 of non-California residency or practice outside the state shall  
8 not apply to reduction of the probationary period.

9 24. VIOLATION OF PROBATION

10 If respondent violates probation in any respect, the  
11 Board, after giving respondent notice and an opportunity to be  
12 heard, may revoke probation and carry out the disciplinary order  
13 that was stayed. If an accusation or petition to revoke  
14 probation is filed against respondent during probation, the Board  
15 shall have continuing jurisdiction until the matter is final, and  
16 the period of probation shall be extended until the matter is  
17 final.

18 25. COMPLETION OF PROBATION

19 Upon successful completion of probation, respondent's  
20 license will be fully restored.

21  
22 DATED: April 29, 1994

23 DANIEL E. LUNGREN, Attorney General  
24 of the State of California

25 Jeanne C. Werner  
26 JEANNE C. WERNER  
27 Deputy Attorney General

Attorneys for Complainant



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3 RESIDENCE/PRACTICE

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8 not apply to reduction of the probationary period.

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11 Board, after giving respondent notice and an opportunity to be  
12 heard, may revoke probation and carry out the disciplinary order  
13 that was stayed. If an accusation or petition to revoke  
14 probation is filed against respondent during probation, the Board  
15 shall have continuing jurisdiction until the matter is final, and  
16 the period of probation shall be extended until the matter is  
17 final.

18 25. COMPLETION OF PROBATION

19 Upon successful completion of probation, respondent's  
20 license will be fully restored.

21 DATED: April 29, 1994

22 DANIEL E. LUNGREN, Attorney General  
23 of the State of California

24 Jeanne C. Werner  
25 JEANNE C. WERNER  
26 Deputy Attorney General

27 Attorneys for Complainant

1  
2 I, Gregory J. Kelly, hereby certify that I have read this  
3 Stipulation and agreement in its entirety, that I fully  
4 understand the legal significance and consequences thereof and  
5 agree to be bound thereby, and in witness thereof I affix my  
6 signature.

7 DATED:

5-6-97

8  
9 Gregory J. Kelly CA

10 GREGORY J. KELLY  
11 Respondent

12 Attachment: Accusation No. AC-96-6  
13

14 JCW/pam

15 (4/30/97)

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An effective date of JUNE 22, 1997, has been assigned to this Decision and Order.

Made this 23 day of MAY, 1997.

Robert J. Spurr

ROBERT J. SHACKLETON  
Board President  
For The Board of Accountancy

DANIEL E. LUNGREN, Attorney General  
of the State of California  
JEANNE COLLETTE WERNER  
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Department of Justice  
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Attorneys for Complainant

BEFORE THE  
BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	NO. AC-96-6
Against:	)	
	)	ACCUSATION
GREGORY J. KELLY	)	
1625 The Alameda	)	
San Jose, CA 95126	)	
	)	
Certified Public Accountant	)	
Certificate No. CPA 52926	)	
	)	
Respondent.	)	

Complainant Carol Sigmann, as cause for disciplinary  
action, alleges:

1. Complainant is the Executive Officer of the  
California Board of Accountancy ("Board") and makes and files  
this accusation solely in her official capacity.

LICENSE INFORMATION

2. On or about May 12, 1989, Certified Public  
Accountant Certificate No. CPA 52926 was issued by the Board to  
Gregory J. Kelly ("respondent"), and at all times relevant  
herein, said Certified Public Accountant Certificate was, and

currently is, in full force and effect, being renewed through  
November 30, 1996.

STATUTES AND REGULATIONS

3. At all times material herein, section 5100 of the  
California Business and Professions Code (hereinafter "Code") has  
provided in pertinent part that "(a)fter notice and hearing, the  
Board may revoke, suspend or refuse to renew any permit or  
certificate" issued by the Board for unprofessional conduct,  
including but not limited to:

5100 (c) Dishonesty, fraud, or gross negligence in the  
practice of public accountancy.

5100 (f) Willful violation of the Accountancy Act or any  
rule or regulation promulgated by the board.

4. Code section 5062 provides that a licensee shall  
issue a report which conforms to professional standards upon  
completion of a compilation, review or audit of financial  
statements.

5. Code section 5070.5 provides in pertinent part  
that certificates, which are issued for a period of two years,  
expire on the last day of the month of the legal birthday of the  
licensee if not renewed, and further provides that, in order to  
renew the license, the licensee must apply on the required form,  
pay a renewal fee, and give evidence to the Board of compliance  
with continuing education provisions.

6. The Board's regulations are codified in Title 16

///

///

1 of the California Code of Regulations, §§ 1-99.<sup>1/</sup> Board Rule  
2 87(a) requires that a licensee complete at least 80 hours of  
3 qualifying continuing education during every two-year period  
4 immediately preceding permit renewal.

5 7. Board Rule 89(a) requires the submission of a  
6 signed statement, under penalty of perjury, that all applicable  
7 continuing education requirements have been met.

8 8. Board Rule 89(d) provides, with regard to  
9 continuing education, that a licensee's willful making of any  
10 false or misleading statement, in writing regarding his or her  
11 continuing education shall constitute cause for disciplinary  
12 action pursuant to section 5100(f) of the Accountancy Act.

13 9. Applicable standards of practice pertinent to this  
14 accusation include, without limitation:

15 A. Generally Accepted Auditing Standards ("GAAS"),  
16 which standards are discussed, as relevant herein, in the  
17 Statements on Auditing Standards ("SAS") codified by the American  
18 Institute of Certified Public Accountants (AICPA). The statements  
19 are codified by AU number. The sections pertinent herein include,  
20 without limitation: AU § 150.02; AU § 326.11; AU § 326.13; AU §§  
21 331.01, 331.02, 339.03, & 339.05; AU § 350.19; AU § 508.12; AU §  
22 508.39; AU § 508.55; AU § 508.83; AU § 551.04; AU § 551.05; and  
23 AU § 560.12.

24 B. Generally Accepted Accounting Principles ("GAAP"),  
25

26 1. The Board's rules, codified at Title 16 of the  
27 California Code of Regulations in sections 1-99, are hereinafter  
referred to as "Board Rule." Thus, for example, 16 C.C.R.  
section 87(a) is Board Rule 87(a).

1 derived from various authoritative sources, including, without  
2 limitation:

3 1. Statements of Financial Accounting Standards  
4 ("FAS" or "FASB"), issued and codified by the Financial  
5 Accounting Standards Board (also "FASB"). The sections  
6 pertinent herein include, without limitation, FASB 95,  
7 Current Standards, Section C25.

8 2. AICPA Audit and Accounting Guides, Vol. 2, Section  
9 AAG-CIR 4.30.

10 10. Statutory Provision for recovery of Board costs.  
11 Code section 5107 provides, in part, that the Board may request  
12 the administrative law judge, as part of the proposed decision in  
13 a disciplinary proceeding, to direct any holder of a permit or  
14 certificate found in violation of section 5100(a), (b), (c), (h),  
15 (i) or (j), to pay to the Board all reasonable costs of  
16 investigation and prosecution of the case, including, but not  
17 limited to, attorney's fees.

18 FOR CAUSES FOR DISCIPLINE

19 Audit of Rinconada Hills Association

20 11. Respondent is subject to disciplinary action in  
21 that he was grossly negligent, within the meaning of Code section  
22 5100(c), in the preparation and presentation of audited financial  
23 statements of the Rinconada Hills Homeowners' Association for the  
24 fiscal years ended September 30, 1990 and 1991. The association  
25 was required to hire another accounting firm to assist in  
26 completing the audit, thus incurring additional expense. Among  
27 the deficiencies in the audit performed by respondent are:

1           A.    The auditor's report failed to disclose and report  
2 on the required Schedule of Future Repairs and Replacements, and  
3 the report lacked the required supplementary disclosures or an  
4 explanatory paragraph describing the omission. (Réference  
5 Statement on Auditing Standards AU § 508.39 and § 508.55; AICPA  
6 Audit and Accounting Guides, Vol. 2, Section AAG-CIR 4.30.)

7           B.    The auditor's report failed to refer to the  
8 supplemental information included with the financial statements  
9 or the auditor's responsibility for the supplemental information.  
10 (The basic financial statement audited by respondent included  
11 supplemental information in the form of "Disclosures Required by  
12 the By-Laws of the Association." The report did not refer to  
13 this supplemental information nor did it describe the auditor's  
14 scope of responsibility for the supplemental information  
15 presented.) (SAS AU §§ 551.04 and 551.05.)

16           C.    The auditor's report failed to indicate the  
17 responsibility taken for the presentation of prior year financial  
18 statements audited by another firm. [(The report includes a  
19 reference to (1990) work performed by another auditor(s). The  
20 audited financial statements of the Rinconada Hills Homeowner's  
21 Association include prior year's financial statements, without an  
22 indication in the report indicating the scope of the respondent's  
23 review relating to this information and the appropriate division  
24 of responsibility for this information.))] (Reference AU §  
25 508.12; AU 508.83.)

26           D.    The financial statements audited by respondent  
27 failed to include a Statement of Cash Flows. (Reference



1 FASB 95.)

2 12. Incorporating by reference the matters alleged in  
3 paragraph 11, respondent is subject to disciplinary action under  
4 Code section 5062 in that the report he issued does not meet  
5 professional standards.

6 Audit of Andulasia Homeowners Association

7 13. Respondent performed an audit of the Andulasia  
8 Homeowners Association for the year ended December 31, 1994, and  
9 is subject to disciplinary action under Code section 5100(c) in  
10 that he was grossly negligent in his performance of said audit,  
11 constituting an extreme departure from the standard of practice  
12 of public accountancy because of various departures, including  
13 but are not limited to, the following:

14 A. The auditor performed inadequate substantive  
15 tests, in that the tests of balances were improperly limited, and  
16 there were no documented tests of revenues and expenses  
17 (reference AU §150.02; AU § 339.02).

18 B. The auditor, who assessed control risk at the  
19 maximum level, failed to appropriately modify his audit approach  
20 and procedures in light of that assessment (reference AU §§  
21 326.11; 326.13; and 350.19.)

22 C. The auditor's working papers lacked key evidential  
23 matter and documented conclusions, in that he failed to document  
24 his application of analytical review procedures in both the  
25 planning and conclusion stages of the audit (reference AU §  
26 329.01).

27 D. The auditor's working papers lacked key evidential

1 matter and documented conclusions, in that the working papers  
2 failed to include a signed representation letter (reference AU §  
3 333.01.)

4 E. The auditor's working papers lacked key evidential  
5 matter and documented conclusions, in that the working papers  
6 failed to document the conclusions reached from tests performed,  
7 for example, in the areas of cash, accounts receivable, search  
8 for unrecorded liabilities, and subsequent events testing. The  
9 auditor failed to appreciate the significance and/or  
10 applicability of the required procedures in his audit program in  
11 areas such as analytical procedures and subsequent events  
12 testing, marking them "N/A" (reference AU § 339.03 and AU §  
13 560.12).

14 F. The auditor failed to document the limited  
15 procedures performed and the conclusions reached from the tests  
16 of the Schedule of Future Repairs and Replacements (reference AU  
17 § 339.05).

18 Audit of Woodstock Home Association

19 14. Respondent performed an audit of the Woodstock  
20 Home Association for the year ended December 31, 1993, and is  
21 subject to disciplinary action under Code section 5100(c) in that  
22 he was grossly negligent in his performance of said audit,  
23 constituting an extreme departure from the standard of practice  
24 of public accountancy because of various departures from  
25 standards, which include, but are not limited to, the following:

26 A. The auditor's report lacked required supplementary  
27 disclosures (reference AICPA Audit and Accounting Guides, Vol. 2,

1 Section AAG-CIR 4.30).

2 B. The financial statements failed to include a  
3 Statement of Cash Flows (reference FASB 95).

4 15. Incorporating by reference the matters alleged in  
5 paragraph 14, respondent is subject to disciplinary action under  
6 Code section 5062 in that the report he issued does not meet  
7 professional standards.

8 FOR FURTHER CAUSE FOR DISCIPLINE

9 Continuing Education for Period 1990 - 1992

10 16. Respondent is subject to disciplinary action  
11 pursuant to Code section 5100(f) in conjunction with Board Rules  
12 87 and 89 in that, during and subsequent to a practice  
13 investigation conducted by Board investigators on August 30,  
14 1994, respondent was unable to produce records to support  
15 continuing education claimed for the renewal period December 1,  
16 1990, to November 30, 1992.

17 17. Incorporating by reference the allegations in  
18 paragraph 16, respondent is subject to disciplinary action in  
19 violation of Code section 5061 in that Board staff's attempts to  
20 independently verify the hours claimed yielded the following  
21 result: 32 hours claimed with ASTA and 8 hours claimed with  
22 Compucraft were not verified, and 16 hours of course work were  
23 not completed within the required two-year period, resulting in  
24 substantiation of only 32 of the 82 hours claimed, whereas the  
25 requirement is to have completed, and maintain evidence of  
26 completion for, 80 hours in each two-year renewal period.

27 ///

1                   Continuing Education for Period 1992 - 1994

2                   18. Respondent is subject to disciplinary action  
3 pursuant to Code section 5100(f) in conjunction with Board Rules  
4 87 and 89 in that, during and subsequent to a practice  
5 investigation conducted by Board investigators on August 30,  
6 1994, respondent was unable to produce records to support  
7 continuing education claimed for the renewal period December 1,  
8 1992, to November 30, 1994. . Respondent has failed to produce any  
9 substantiation to date.

10                   OTHER MATTERS

11                   19. Pursuant to Code section 5107, it is requested  
12 that the administrative law judge, as part of the proposed  
13 decision in this proceeding, direct respondent to pay to the  
14 Board all reasonable costs of investigation and prosecution in  
15 this case, including, but not limited to, attorneys' fees.

16  
17                   PRAYER

18                   WHEREFORE, complainant requests that the Board hold a  
19 hearing on the matters alleged herein, and that following said  
20 hearing, the Board issue a decision:

- 21                   1. Revoking or suspending Certified Public Accountant  
22                   Certificate Number CPA 52926, heretofore issued to  
23                   respondent Gregory J. Kelly;  
24                   2. Awarding the Board costs as provided by statute;  
25                   and

26                   ///

27                   ///

3. Taking such other and further action as the Board  
deems proper.

DATED: 7-23-96

Carol Sigmann *AMS*  
Carol Sigmann  
Executive Officer  
Board of Accountancy  
Department of Consumer Affairs  
State of California

Complainant

JCW:pam  
(6/26/96)